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**FEDERAL COMMUNICATIONS
COMMISSION**

In re)	MM DOCKET No.: 97-122
)	
GERARD A. TURRO)	File No.: BRFT-970129YC
)	
For Renewal of License)	File No.: BRFT-970129YD
For FM Translator Stations)	
W276AQ(FM), Fort Lee, NJ,)	
and W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
Order to Show Cause Why the)	
Construction Permit for FM)	
Radio Station WJUX(FM),)	
Monticello, NY,)	
Should Not Be Revoked)	

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Washington, D.C. 20554

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Monticello, NY, Should Not)	
Be Revoked)	

Courtroom 1
FCC Building
2000 L Street, N.W.
Washington, D.C.

Thursday,
December 11, 1997

The parties met, pursuant to adjournment,
at 9:03 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gerard Turro (Resume)					
By Mr. Aronowitz	--	1769	--	--	--
Herman E. Hurst, Jr.					
By Mr. C. Naftalin	1852	--	--	--	--
By Mr. Helmick	--	1870	--	--	--
By Mr. Aronowitz	--	1884	--	--	--
By Mr. C. Naftalin	--	--	1909	--	--
By Mr. Aronowitz	--	--	--	1915	--
Herman E. Hurst, Jr. (Recalled)					
By Mr. Aronowitz	--	1919	--	--	--
John E. Hidle					
By Mr. A. Naftalin	1922	--	--	--	--
by Mr. Aronowitz	--	1925	--	--	--

E X H I B I T S

IDENTIFIED RECEIVED REJECTED

Turro:

T-35	(Prev.)	1853	--
T-37	1854	1859	--
T-36	(Prev.)	1923	--

Hearing Began:	9:03 a.m.	Hearing Ended:	4:08 p.m.
Recess Began:	11:30 p.m.	Recess Ended:	1:33 p.m.

P R O C E E D I N G S

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JUDGE STEINBERG We are on the record, and I had finished my questioning on Turro Exhibit No. 1, and then who is going to go -- is Mr. Aronowitz going to cross-examine first?

MR. ARONOWITZ: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. ARONOWITZ;

Q Good morning, for the record.

A Good morning.

Q Mr. Turro, when did you first learn that a complaint had been filed with respect to Fort Lee?

A I don't remember the exact time that I knew.

MR. ARONOWITZ: This is the -- which exhibit?

MS. FRIEDMAN: Eight.

MR. ARONOWITZ: This is Mass Media Bureau Exhibit 8, a copy of the letter of inquiry. And I will put this before Mr. Turro.

THE WITNESS: Okay.

BY MR. ARONOWITZ;

Q And I ask you to turn to page 2.

JUDGE STEINBERG: Do you have a page 114.

MR. HELMICK: 115.

MR. ARONOWITZ: Bates stamp 115. I am referring to page 2 of the actual letter.

1 JUDGE STEINBERG: Okay. But it is Bates stamp
2 115.

3 BY MR. ARONOWITZ;

4 Q And read the first sentence?

5 A I'm sorry. Which sentence would that be?

6 Q "I am aware"?

7 A Yes.

8 Q Okay. Oh, and then the next sentence, "While no
9 copy of that letter."

10 A The last word in the sentence "files" ends it;
11 that's how far you want me to read?

12 Okay. It's really the first two sentences,
13 correct?

14 Q The first two sentences, correct.

15 A Yes, sir.

16 Q Does that help you?

17 A Yes.

18 Q So when did you learn of the complaint?

19 A The date?

20 Q Were you aware of the complaint by the time this
21 letter of inquiry was prepared?

22 A Yes.

23 Q Okay, so that was by July 22nd?

24 A Yes.

25 Q And you got a copy from your attorney?

1 A Yes.

2 Q Okay. And is it fair to say that you got a copy
3 of it before the complaint was actually filed?

4 JUDGE STEINBERG: The response; not the complaint.

5 MR. ARONOWITZ: The response was filed. Excuse
6 me.

7 THE WITNESS: I'm sorry. Could you repeat the
8 question?

9 JUDGE STEINBERG: The complaint was filed; you
10 responded, and your response is what you have in front of
11 you?

12 THE WITNESS: Yes.

13 JUDGE STEINBERG: The question was you got a copy
14 of the complaint before you responded?

15 THE WITNESS: Yes.

16 MR. C. NAFTALIN: Your Honor, could we clarify?
17 This response was to an FCC letter, not to the complaint
18 itself.

19 JUDGE STEINBERG: Well, the question was the
20 complaint. The question was awareness of the complaint.

21 MR. C. NAFTALIN: Okay.

22 BY MR. ARONOWITZ;

23 Q And prior to the -- well, you got a copy of --
24 your letter states that you got a copy of the complaint from
25 your attorney that you noted in your response. So you were

1 aware that the FCC -- that a complaint was filed.

2 Did your -- I think I asked you, I'm not sure if
3 you answered me, you obtained -- did you obtain a copy of
4 the complaint from your attorney shortly after you received
5 the Commission's letter of inquiry?

6 A As i stated when you first asked me, I'm not
7 exactly sure when I had received a copy of the Universal
8 complaint.

9 Q Okay. But you did ultimately obtain it in
10 response to the letter of inquiry -- as a result of the
11 letter of inquiry sent to you by the Commission that you
12 responded to?

13 A I don't understand the question. I'm sorry.

14 JUDGE STEINBERG: Did you get a copy of the
15 complaint before or after Mr. Goldstein's letter of inquiry?

16 THE WITNESS: I believe I had received it before.

17 MR. ARONOWITZ: Okay,

18 BY MR. ARONOWITZ;

19 Q And Mr. Goldstein's letter to you went out -- will
20 you accept Attachment A, but will you accept the fact that
21 Mr. Goldstein's letter went out on June 6, 1995; subject to
22 check?

23 A Yes.

24 Q Okay.

25 JUDGE STEINBERG: Well --

1 BY MR. ARONOWITZ;

2 Q All right, you can -- it is on page -- why don't
3 you turn to page Bates stamp 120.

4 JUDGE STEINBERG: Well, whatever the date is, June
5 6th, okay.

6 BY MR. ARONOWITZ;

7 Q Are you saying that you were aware --

8 JUDGE STEINBERG: That's a letter from Michael
9 Hayden.

10 MR. RILEY: Bureau Exhibit 8 is Ron Goldstein's
11 letter, Bureau Exhibit 8.

12 MR. ARONOWITZ: I'm sorry.

13 JUDGE STEINBERG: June 21, 1995, try that.

14 MR. ARONOWITZ: June 21, 1995.

15 I apologize. I was reading the wrong exhibit.

16 BY MR. ARONOWITZ;

17 Q Okay, prior to learning of the complaint were you
18 aware that there was some concern relative to the operation
19 of the Fort Lee translator?

20 A Prior to the complaint of Universal?

21 Q Prior to obtaining the complaint --

22 A From Universal?

23 Q -- from Universal.

24 A Okay.

25 Q Were you aware that there was some concern -- some

1 FCC concern with respect to the Fort Lee translator?

2 A Not that I recall.

3 Q Okay. There was the FCC inspections of April and
4 May?

5 A Yes.

6 Q Okay.

7 JUDGE STEINBERG: April and May of '95.

8 MR. ARONOWITZ: Of '95.

9 BY MR. ARONOWITZ;

10 Q In fact, I think in your direct statement on the
11 May -- on the May 1995 inspection, you went up to the Fort
12 Lee translator --

13 A Did not.

14 Q That's right. That was August. Excuse me.

15 In August of '95, you went up to the Fort Lee
16 translator with Mr. Loginow. So is it fair to say that in
17 August of '95 you were aware of some concern with respect to
18 the operation of the Fort Lee translator?

19 A Well, I was aware of it because of Mr. Goldstein's
20 letter, yes.

21 Q Well, this is '95 now.

22 A Yes. I had responded at that point. I had just
23 responded to Mr. Goldstein's letter probably a week or two
24 prior.

25 Q Mr. Goldstein's letter was, I think we just

1 established, June --

2 JUDGE STEINBERG: June 29th of '95.

3 MR. ARONOWITZ: -- 29, '95.

4 BY MR. ARONOWITZ;

5 Q And you met with -- okay.

6 I ask you to turn to Bates stamp 120 in front of
7 you, and there is the letter that I previously and
8 erroneously referred to as the June 6th letter to you, and
9 that -- is that correct? Do you see it?

10 A I see the letter.

11 Q Okay. And is it fair to say that the subject of
12 this letter is the use of the intercity relay link that we
13 have come to know as WMG499?

14 A Yes.

15 Q Okay. So you were aware there was some concern
16 with respect to the link, at least on June 6, '95?

17 A To the link; not the translator. Yes.

18 Q I believe in your statement, and we will go there
19 if necessary, but I believe in your statement that when you
20 were describing the May 15, 1995, jamming incident, as you
21 called it, I think you stated that one of your concerns was
22 that the FCC was responsible for that jamming?

23 A Yes.

24 Q And that one of your concerns --

25 A I'm sorry. I didn't say -- I didn't say that

1 initially. My initial concern was, as I discussed
2 yesterday, was that I had thought, and this is in my
3 statement, that I thought Universal had jammed the microwave
4 unit, and that's in my statement.

5 Q Okay. At first, and then later you had a
6 conversation with Mr. Hurst --

7 A Yes.

8 Q -- in which the FCC's name came up?

9 A He was convinced that it wasn't Universal, and
10 that it was probably the FCC.

11 MR. C. NAFTALIN: I would like to put a copy of
12 the statement in front of him.

13 MR. ARONOWITZ: Oh, absolutely. I was just going
14 to ask you to do that.

15 MR. C. NAFTALIN: Let me just show counsel. There
16 are virtually just a couple of little marks here on it.

17 JUDGE STEINBERG: You can get us off the record.

18 (Pause off the record.)

19 JUDGE STEINBERG: Back on the record.

20 (Pause.)

21 BY MR. ARONOWITZ;

22 Q All right, on page 24 of your statement, the first
23 full paragraph that say, "The incident on May 15."

24 JUDGE STEINBERG: Okay, that's Turro Exhibit 1.

25 MR. ARONOWITZ: Of Turro Exhibit 1, Mr. Turro's

1 direct statement.

2 THE WITNESS: Yes.

3 MR. ARONOWITZ: Okay.

4 BY MR. ARONOWITZ;

5 Q So at some point during the course of May 15 you
6 suspected WVNJ and/or the FCC as being behind the jamming
7 incident?

8 A I didn't have any conclusive evidence. That was
9 just pure --

10 Q That was your suspicion?

11 A Strictly suspicion.

12 Q Okay. And on -- and then earlier the FCC visited
13 Dumont and Monticello in April?

14 A I have been told that, yes.

15 Q Well, you were on the phone with Mr. Loginow,
16 weren't you?

17 A Yes, this is true.

18 Q Okay, so nobody had to tell you that?

19 A Well, I had to be told about the inspection the
20 following day. I wasn't present for that.

21 Q Okay. And I believe yesterday you said that on
22 your conversation with Mr. Loginow he asked you with respect
23 to whether the Fort Lee translator could receive the
24 Monticello signal.

25 A Through Pomona, correct.

1 Q So you were aware that there was some concern on
2 Serge's part whether the Fort Lee translator could receive
3 the signal as you represented it was being done?

4 A Well, I could understand that. I could understand
5 that concern.

6 Q Okay. In May of '95, you said that you were
7 concerned that WVNJ had been interfering with your
8 operations. This is in your direct statement --

9 A In that one incident.

10 Q In that one incident. But not before that?

11 A You mean technically?

12 Q Technically.

13 JUDGE STEINBERG: Technically what? Interfering
14 technically, is that what you mean?

15 MR. ARONOWITZ: Correct.

16 BY MR. ARONOWITZ;

17 Q Or in any way, let's say in any way was WVNJ
18 trying to interfere with you in any way?

19 A Almost -- technically and beyond technical?

20 Q Yes, in any way.

21 A Yes. Yes.

22 Q How so?

23 A They were on the street telling advertisers not to
24 advertise with Jukebox Radio; that we were an illegal
25 operation; that they had convinced Mr. Goldstein to shut us

1 down; and that the FCC -- any day it was going to happen. I
2 was told that Bill Gaghan had a calendar in his office with
3 a count down number of day until the FCC pulled the plug.
4 They were out telling the community not to buy air time from
5 us. They had basically bad mouthed us, and they had
6 convinced advertisers to run from us and not advertise from
7 us because this, in their eyes, was an illegal operation and
8 Mr. Goldstein had assured them that he was going to shut us
9 down.

10 Q Okay. And when did you become aware of this type
11 of purported interference?

12 A What we're talking about now?

13 Q Right, absolutely.

14 A This is in the winter of '95.

15 Q So you were concerned in the winter of '95 about
16 these things, about what WVNJ might be doing to cause you
17 harm?

18 A I wasn't concerned. I was more aware of it, yes.

19 Q Okay.

20 MR. RILEY: Your Honor?

21 JUDGE STEINBERG: Yes.

22 MR. RILEY: Does the winter of '95 mean December
23 of '95 or does it mean the beginning of '95?

24 JUDGE STEINBERG: Well, we would have to ask the
25 witness what he meant by "winter," so I'll ask him.

1 What do you mean by winter?

2 THE WITNESS: I would say some time after January
3 of '95.

4 BY MR. ARONOWITZ;

5 Q But when you say some time in January of '95,
6 that's when you first became aware of WVNJ doing this?

7 A I must tell you I don't know if it was January or
8 February. I can't give you a specific date.

9 Q But it wasn't necessarily earlier? Was it prior
10 to January of '95?

11 A I don't really believe that it was. It may have
12 been, but I don't recall.

13 Q Okay.

14 Q And prior to -- you mentioned your arrangement
15 with Mr. Weis, which we will deal with in a few minutes --
16 you had previously come to the -- you had previously sought
17 permission from the FCC with respect to origination of
18 programming on translators; is that correct?

19 A Could you be specific?

20 Q Did you ever seek the FCC -- did you ever ask the
21 FCC to make a rule or in any way do a rulemaking that would
22 allow translators to originate programming?

23 A I believe -- I guess I had done that some time in
24 the eighties.

25 Q And, in fact, did you attempt to get origination

1 authority for the Fort Lee translator in specific?

2 A Yes.

3 Q Did you seek a waiver of the rules in order --

4 A Yes.

5 Q -- to do that?

6 Were you successful in either of those efforts?

7 A No.

8 Q Okay. Is it fairly safe to say that you really
9 knew what you could and couldn't put on translators as a
10 result of this process, I mean, the rulemaking and the
11 waiver request, that you came to an understanding of what
12 programming you could put on a translator?

13 JUDGE STEINBERG: Well, I think --

14 BY MR. ARONOWITZ;

15 Q Is it fair --

16 JUDGE STEINBERG: If you would leave off the first
17 part because you tied it into the rulemaking, you tied it
18 into his waiver request, and then you said "as a result of
19 these two things did you become."

20 Why don't you just ask did you become aware of
21 what translators could broadcast and how did you become
22 aware, and then you're tieing -- and that's confusing him
23 because he wants to answer, I know what translators can do,
24 but he can't answer that because you tied it into these two
25 specific requests.

1 BY MR. ARONOWITZ;

2 Q Did you come to form an understanding of what
3 translators could do in terms of programming?

4 A In terms of programming?

5 Q Yes, what translators could originate in terms of
6 programming?

7 A In terms of programming, no.

8 Q You formed no conclusion?

9 A In terms of programming, no.

10 Q Are you saying that -- just so I understand you,
11 are you saying that you can't do programming or you had no
12 understanding of what programming you could do?

13 A Programming --

14 Q Let me try it again.

15 A Okay.

16 Q Did you come to form an understanding, if ever, if
17 what programming could be originated on a translator?

18 A In respect to programming?

19 Q Correct.

20 A I don't know what you're referring to.

21 JUDGE STEINBERG: Program origination.

22 THE WITNESS: Oh, program origination?

23 JUDGE STEINBERG: Yes.

24 THE WITNESS: Oh, I knew what program origination
25 you could and couldn't do, yes.

1 MR. ARONOWITZ: Okay.

2 BY MR. ARONOWITZ;

3 Q And did you come to form an understanding of how a
4 translator must receive a signal for rebroadcast?

5 JUDGE STEINBERG: Let's say a signal of a
6 commercial FM station.

7 BY MR. ARONOWITZ;

8 Q Did you come -- did you come to form an
9 understanding of how a translator must receive the signal of
10 a commercial FM station for rebroadcast?

11 A Yes.

12 Q Can translators also rebroadcast non-commercial FM
13 stations?

14 A Yes.

15 Q Okay. When did you come to form -- when did you
16 make these understandings? When did you -- did you have
17 these understandings of what a translator's programming
18 capabilities and technical capabilities -- you testified
19 that you came to have an understanding of what could be
20 originated, what program origination?

21 A Yes.

22 Q And you came to an understanding with respect to
23 the rebroadcasting of a primary FM station on a translator.
24 Do you know -- yes?

25 A Yes.

1 Q And when did you have these understandings?
2 Prior to October of '94?

3 A Yes.

4 Q Did you have these understandings in 1991?

5 A Yes.

6 Q Okay, great.

7 Mr. Turro, if you would turn in the letter of
8 inquiry, I believe it's Attachment E.

9 JUDGE STEINBERG: Okay, he has got his response to
10 the letter of inquiry, not the letter of inquiry.

11 MR. ARONOWITZ: I meant the response to the letter
12 of inquiry, Attachment #.

13 JUDGE STEINBERG:

14 THE WITNESS: Attachment? I'm sorry.

15 MR. ARONOWITZ: "E" as in "Edward."

16 THE WITNESS: Is there a Bates stamp on that?

17 JUDGE STEINBERG: There is a Bates stamp on
18 everything.

19 THE WITNESS: Okay.

20 MR. ARONOWITZ: It starts at page Bates stamp 142,
21 142.

22 JUDGE STEINBERG: And we're still talking about
23 your Exhibit 8.

24 THE WITNESS: Attachment 8?

25 JUDGE STEINBERG: Just one page, page 143.

1 THE WITNESS: Okay. Yes.

2 BY MR. ARONOWITZ;

3 Q And Bates stamp 143 --

4 A Yes.

5 Q -- is this the 1991 letter that you have referred
6 to with respect to seeking an informal ruling from the
7 Commission with respect to operation of the translator?

8 A I'm sorry. There was noise. I didn't hear you.

9 JUDGE STEINBERG: Is this the 1991 letter to which
10 you referred as requesting -- requesting what?

11 BY MR. ARONOWITZ;

12 Q A Commission -- a Commission informal ruling that
13 you referred to yesterday that you relied on?

14 A I believe this is the letter.

15 Q Okay.

16 JUDGE STEINBERG: It's also referred to on page 2
17 of Mr. Turro's Exhibit No. 1.

18 BY MR. ARONOWITZ;

19 Q You've testified that you have asked the FCC for
20 permission for a translator to purchase broadcast time on a
21 primary FM station that originates the programming
22 rebroadcast on the translator, and this is the letter by
23 which you sought that authority; is that correct?

24 A Yes.

25 Q Okay. The arrangement that you subsequently

1 entered into -- the Commission responded to this, and the
2 Commission's response is what you based your relationship
3 with Mr. Weis on, as you testified, or as has been testified
4 in the past; is that correct?

5 A Partially, yes.

6 Q Partially.

7 Would you read this '91 letter very quickly? No,
8 read the '91 letter. Take your time.

9 JUDGE STEINBERG: To yourself.

10 MR. ARONOWITZ: To yourself.

11 MR. C. NAFTALIN: Do you mean his own letter or --

12 JUDGE STEINBERG: Page 143, correct?

13 MR. ARONOWITZ: Page 143, his own letter.

14 (Witness reviews document.)

15 THE WITNESS: Okay, I've read the letter.

16 MR. ARONOWITZ: Okay.

17 BY MR. ARONOWITZ;

18 Q Do you believe that this letter reflects,
19 accurately reflects your relationship with MMBI?

20 A Yes.

21 Q It does.

22 Is there any --

23 JUDGE STEINBERG: Let me just interrupt. In your
24 '91 letter, page 143, you talk about the purchase of
25 brokered air time.

1 THE WITNESS: Yes.

2 JUDGE STEINBERG: But what you have with Mr. Weis
3 is a network affiliation agreement.

4 THE WITNESS: That is correct, Your Honor.

5 JUDGE STEINBERG: Can you explain to me in your
6 own mind what the differences between the purchase of
7 brokered air time and an network affiliation agreement?

8 THE WITNESS: The network affiliation agreement
9 was done under advice of counsel, at the time Dan Miller
10 from Koteen & Naftalin, who read both letters and said, you
11 know --

12 JUDGE STEINBERG: When you say "both letters"?

13 THE WITNESS: I'm sorry. Read this letter and the
14 response letter.

15 JUDGE STEINBERG: He read page 143?

16 THE WITNESS: Yes, and --

17 JUDGE STEINBERG: And he read Mr. Stewart's
18 response?

19 THE WITNESS: Yes, and he said, you know -- and I
20 had plans to go beyond just that one facility of WXTM
21 Monticello, to go on more stations. He goes, "If that's
22 what you're planning to do, you should really do a network
23 affiliation agreement with him, and that would just make
24 more sense."

25 So I followed advice of counsel, and that's why it

1 turned out the way it turned out.

2 JUDGE STEINBERG: Okay, but what I'm asking you in
3 your own mind --

4 THE WITNESS: Yes?

5 JUDGE STEINBERG: -- what's the difference, if
6 there is any difference, between a network affiliation
7 agreement or a network affiliation arrangement, and the
8 purchase of brokered air time?

9 THE WITNESS: I really don't see any is my
10 understanding. I don't --

11 JUDGE STEINBERG: So in your own mind, there is no
12 difference?

13 THE WITNESS: No.

14 BY MR. ARONOWITZ;

15 Q And if you flip to the next page, you see the
16 Commission response?

17 A Yes.

18 JUDGE STEINBERG: That's page 144.

19 BY MR. ARONOWITZ;

20 Q Page 144, the Commission response to your letter
21 dated November 19, 1991.

22 A Yes.

23 Q Signed by Roy Stewart on the next page.

24 A Correct.

25 Q And are you familiar with this letter? Would you